

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 RITA M. LANE  
Deputy Attorney General  
4 State Bar No. 171352  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2614  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 875-A

12 **MARTIN JAMES O'MALLEY**  
13 **650 East Chase Drive**  
14 **Corona, CA 92881**

**A C C U S A T I O N**

15 **Land Surveyor License No. L 3745**  
**Civil Engineer License No. C 27217**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity as  
21 the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department  
22 of Consumer Affairs.

23 2. On or about December 18, 1970, the Board for Professional Engineers and Land  
24 Surveyors issued Land Surveyor License Number L 3745 to Martin James O'Malley  
25 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on June 30, 2010, unless renewed.

27 3. On or about July 14, 1976, the Board for Professional Engineers and Land Surveyors  
28 issued Civil Engineer License Number C 27217 to Respondent. The Civil Engineer License was

1 in full force and effect at all times relevant to the charges brought herein and will expire on  
2 March 31, 2011, unless renewed.

### 3 JURISDICTION

4 4. This Accusation is brought before the Board for Professional Engineers and Land  
5 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.  
6 All section references are to the Business and Professions Code (Code) unless otherwise  
7 indicated.

8 5. Section 118, subdivision (b), of the Code provides that the expiration, surrender or  
9 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
10 action during the period within which the license may be renewed, restored, reissued or  
11 reinstated.

12 6. Section 8780 of the Code states, in pertinent part, that "[T]he board may reprove,  
13 suspend for a period not to exceed two years, or revoke the license or certificate of any licensed  
14 land surveyor or registered civil engineer, respectively, licensed under this chapter . . . , whom it  
15 finds to be guilty of:"

16 (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

17 (b) Any negligence or incompetence in his or her practice of land surveying.

18 . . . .

19 (d) Any violation of any provision of this chapter or of any other law relating to or  
20 involving the practice of land surveying.

### 21 COSTS

22 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
23 administrative law judge to direct a licentiate found to have committed a violation or violations of  
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
25 enforcement of the case.

### 26 SCHULTZ ROAD PROPERTIES

27 8. Respondent was hired by P.T., the owner of 25915 Schultz Road in Hemet,  
28 California, to determine the location of a common easement and to determine the placement of a

1 fence along one side of the easement in a property dispute between neighboring property owners.  
2 The properties at 25901, 25909, 25915 and 25917 Schultz Road are serviced by a common  
3 easement. The property at 25917 Schultz Road has an additional easement that was granted from  
4 25915 Schultz Road that permits access from the common easement to the property located at  
5 25917 Schultz Road.

6 9. As a result of the dispute over the easement with P.T., the property owners on Schultz  
7 Road filed a lawsuit against P.T. to determine the location of the common easement and to  
8 determine the placement of a fence along one side of the easement.

9 10. The parties went to arbitration. An arbitration agreement was reached and N.M., the  
10 property owner of 25917 Schultz Road, was required to hire a surveyor and prepare a legal  
11 description of the easement and mark on the ground the points set for what was to become a  
12 license for use by N.M. and his neighboring property owners.

13 11. Respondent, acting on behalf of P.T., requested irrelevant information and stalled  
14 the conclusion of the arbitration agreement made between the parties by failing to refuse or reject  
15 the points set by N.M.'s surveyor in marking the easement. Respondent impeded the conclusion  
16 of the arbitration agreement and advised his client of ways to stall the finalization of the  
17 agreement. Respondent claimed the legal description prepared by N.M.'s surveyor was not clear  
18 and was impossible to follow and that Respondent could not tell where the boundaries were  
19 located. Respondent prepared a drawing of the easement and submitted it to the court.  
20 Respondent's drawing misrepresented the easement description. Respondent drew the easement  
21 with a uniform width of twenty-four feet, which was incorrect. Respondent informed the Board  
22 that he did not do any field surveying on the project for P.T.

#### 23 FIRST CAUSE FOR DISCIPLINE

24 (Incompetence)

25 12. Respondent is subject to disciplinary action under Code section 8780(b) in that  
26 Respondent was incompetent in his practice of land surveying regarding the Schultz Road  
27 properties. The circumstances are as follows:

28 ///

1           a.     Respondent erroneously claimed the legal description for the easement prepared by  
2 N.M.'s surveyor was not clear and impossible to follow without a field survey. Respondent also  
3 stated that he could not tell where the boundaries were for the easement. The supporting facts are  
4 more particularly alleged in paragraphs 8 through 11, above, and incorporated herein by  
5 reference.

6           b.     Respondent misinterpreted the easement description and submitted to the court and  
7 the arbitrator in the lawsuit, a drawing that the easement was a uniform width of 24 feet, when it  
8 was not. The supporting facts are more particularly alleged in paragraphs 8 through 11, above,  
9 and incorporated herein by reference.

10                               SECOND CAUSE FOR DISCIPLINE

11                                       (Negligence)

12           13.    Respondent is subject to disciplinary action under Code section 8780(B) in that  
13 Respondent was negligent in his practice of land surveying regarding the Schultz Road properties.  
14 The circumstances are as follows:

15           a.     Respondent failed to confirm or deny the survey prepared by N.M.'s surveyor,  
16 thereby impeding the conclusion of the arbitration agreement between the property owners. The  
17 supporting facts are more particularly alleged in paragraphs 8 through 11, above, and  
18 incorporated herein by reference.

19           b.     Respondent advised his client, P.T., of ways to stall the finalizing of the arbitration  
20 agreement between the property owners. The supporting facts are more particularly alleged in  
21 paragraphs 8 through 11, above, and incorporated herein by reference.

22                               THIRD CAUSE FOR DISCIPLINE

23                                       (Deceit and Misrepresentation)

24           14.    Respondent is subject to disciplinary action under section 8780(a) in that Respondent  
25 was deceitful and made misrepresentations in his practice of land surveying regarding the Schultz  
26 Road properties. The circumstances are as follows:

27           a.     Respondent would not contact N.M.'s surveyor to accept or reject the points for the  
28 boundaries of the easement set by N.M.'s surveyor in marking the easement pursuant to the

1 arbitration agreement. The supporting facts are more particularly alleged in paragraphs 8 through  
2 11, above, and incorporated herein by reference

3 b. Respondent stated that a fence did not encroach on the access easement in this case.  
4 In order to declare that a fence did not encroach on the access easement, a field survey would  
5 have had to have been completed. Respondent told the Board that he did not perform a field  
6 survey in this case. Either Respondent is being deceitful to the Board or misrepresenting facts to  
7 the Board. The supporting facts are more particularly alleged in paragraphs 8 through 11, above,  
8 and incorporated herein by reference.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
11 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a  
12 decision:

- 13 1. Revoking or suspending Land Surveyor License Number L 3745 issued to Martin  
14 James O'Malley;  
15 2. Revoking or suspending Civil Engineer License Number C 27217 issued to Martin  
16 James O'Malley;  
17 3. Ordering Martin James O'Malley to pay the Board for Professional Engineers and  
18 Land Surveyors the reasonable costs of the investigation and enforcement of this case pursuant to  
19 Business and Professions Code section 125.3; and  
20 4. Taking such other and further action as deemed necessary and proper.  
21

22 DATED: 12/9/09

*Original Signed*

DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

*Complainant*

27 SD2009702333  
28 80394806.doc